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Do You Have a Claim if Your Business Was Interrupted Due to a Hurricane?

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While another hurricane season is fast approaching, many business owners are still recovering from the financial wounds inflicted by Hurricanes Harvey, Irma, and Maria. Unfortunately, salt is still being poured in those wounds. Insurance policyholders throughout Texas, Florida and Puerto Rico first had to fight for payment after billions of dollars' worth of property damage. Many claims that insurers refused to pay are just now becoming lawsuits more than a year and a half after the storms. And as many businesses are quickly realizing, obtaining payment for property damage was only half the battle. The other half involves a critical question: Do insurance policies cover business interruption caused by a hurricane even if there was no physical property damage?

Common sense and experience tell us that a business does not need to have its roof blown off to suffer adverse economic consequences from a storm. Indeed, the impact can be felt before a storm even makes landfall. Businesses close days in advance to take precautionary measures such as securing internal property, boarding up windows and laying sandbags. Employees are sent home early to allow them to make the same preparations at home. Would-be customers are also preparing themselves by spending time and money at the local home improvement store rather than other businesses in the community. Civil authority orders might even place customers within a mandatory evacuation zone.

The noticeable economic downturn can easily continue after a hurricane even if a business was spared physical property damage or is able to quickly repair any damage. Potential customers may be taking measures to mitigate or repair their own property damage at home. Debris or flooding in the streets might prevent access to certain areas, electricity may be out, and other critical infrastructure may be indefinitely damaged. Curfews can keep people at home during certain hours. The negative economic impact of these scenarios is obvious. But is this a covered loss under a commercial property insurance policy in the absence of property damage?

In the aftermath of Harvey, Irma and Maria, insurance companies were quick to argue that this is a requirement in their policies. For carriers, no property damage equals no business interruption. If this position sounds unreasonable on its face, it's because it's frequently incorrect. Many insurance policies do provide business interruption coverage even when there was no direct physical loss or after such loss is

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repaired. Alternatively, they are silent on the issue or are simply unclear as to whether damage is a prerequisite to business interruption coverage. Under any of these situations, Florida law requires the policy to be read broadly in favor of the insured and coverage. Carriers are not the beneficiaries of ambiguous policy language, and they certainly cannot rewrite their policies after the fact. But this has not stopped them from trying.

Policyholders that accept the carrier's coverage denial at face value become an insurance industry statistic. Dig beneath the surface of that denial, however, and it may begin to unravel. If property damage is required, why is there a separate and independent deductible for business interruption loss? Why doesn't the business interruption insuring agreement make any reference to property damage? Why doesn't the period of interruption begin with damage to property? Why don't the civil authority or ingress/egress coverages require damage to the insured property? Why isn't there an exclusion for business interruption without property damage? These can all be indications that the insurer did not, in fact, issue business interruption coverage that requires property damage. Identifying these elements could be the difference between a substantial insurance payout and going home empty handed.

In addition, to make the case for business interruption without property damage, the importance of a policyholder's historical financial records cannot be overstated. To claim business interruption pre- or post-hurricane is one thing. To accurately quantify it is another. Proving business interruption before a hurricane even makes landfall requires a close consideration of past economic trends that controls for other variables. The same is true for after a storm, when business remains depressed even in the absence of direct damage to the physical property insured. Data is key, and it can be a policyholder's best ally in capturing a hurricane's full dollars-and-cents impact on the bottom line.

Policyholders who suffer business interruption should not settle for less than the coverage they purchased when they need it the most. An insurer is bound by the plain language of the policy it issued, and Florida law provides fee shifting for policyholders who prevail in litigation regarding their contractual rights. It also provides a statutory bad faith remedy when insurers engage in the unfair trade practice of misrepresenting policy provisions. Time, however, is of the essence. Many policies contain suit limitations clauses that shorten the time for policyholders to bring other wise valid claims. For those still struggling to secure payment of a business interruption claim, the time to act is before another storm season is upon us.

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